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2                   IN THE UNITED STATES DISTRICT COURT FOR THE  
3                   WESTERN DISTRICT OF MISSOURI  
4                   WESTERN DIVISION

5 UNITED STATES OF AMERICA,            ) Case No. 11-00223-10-CR-W-BCW  
6                                    ) )  
7                   Plaintiff,            ) Kansas City, Missouri  
8                                    ) November 26, 2013  
9                   v.                    )  
10                                    )  
11                   JEFFREY A. OLSON,        )  
12                                    )  
13                   Defendant.            )  
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10                   TRANSCRIPT OF HEARING ON CHANGE OF PLEA  
11                   BEFORE THE HONORABLE SARAH W. HAYS  
12                   UNITED STATES MAGISTRATE JUDGE

13 APPEARANCES:

14 For the Plaintiff:                   Daniel M. Nelson, Esq.  
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17 For the Defendant:                   John G. Gromowsky, Esq.  
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24 Proceedings recorded by electronic sound recording, transcript  
25 produced by transcription service.

1 (Court in Session at 4:02 p.m.)

2 THE COURT: We're here on the case of *United States vs.*  
3 *Jeffrey Olson*, Case No. 11-223. If counsel would state their  
4 appearance for the record.

5 MR. NELSON: May it please the Court? Dan Nelson for  
6 the United States.

7 MR. GROMOWSKY: Good afternoon, Your Honor. John  
8 Gromowsky for Mr. Olson who appears in person.

9 THE COURT: All right. We're here today -- we were --  
10 we had an earlier proceeding but are back on the record because  
11 it's my understanding that Mr. Olson wants to change his plea  
12 from not guilty to guilty. Judge Wimes had already left for the  
13 afternoon. And although he offered to come back, it was going to  
14 take him more than an hour or so to get back down here, so we  
15 thought we would just proceed this way. I will be taking the  
16 plea by Report and Recommendation. So, after today, since your  
17 trial judge is Judge Wimes, we'll make a copy of the transcript  
18 and you'll have 14 days to make any objections if you all of a  
19 sudden decided that something hadn't gone according to plan here  
20 this afternoon. So, it's my understanding that the defendant  
21 wants to change his plea. I've not had a chance to look at the  
22 Plea Agreement and at some point I'll have you go into more  
23 detail, but what count or counts is the defendant going to plead  
24 to?

25 MR. NELSON: Your Honor, at the defendant's request, the

1 United States is allowing him to plead to Count Forty-One, which,  
2 in the Plea Agreement contemplates and the Government has agreed  
3 that in exchange, in Paragraph 8, will dismiss Count One at the  
4 time of sentencing.

5 THE COURT: All right. So, that's the first thing I  
6 wanted you to be aware of, Mr. Olson, is what count of the  
7 Indictment we're here to talk about. And Count Forty-One is, my  
8 recollection is by looking at the Indictment, involves an  
9 allegation of filing false claims for tax refunds and carries a  
10 penalty of not more than five years in prison, not more than a  
11 \$250,000 fine, not more than three years supervised release and  
12 \$100 mandatory special assessment. Under the Indictment, there  
13 is also the possibility of an order of restitution. Is that  
14 addressed in the Plea Agreement, Mr. Nelson?

15 MR. NELSON: I believe it is addressed in the Plea  
16 Agreement.

17 MR. GROMOWSKY: Your Honor, a specific dollar amount is  
18 not addressed but it does discuss the possibility of restitution  
19 and how that will be paid.

20 THE COURT: All right. Well, I wanted you to be aware  
21 of that. It's in the Indictment and when we come to the summary  
22 of the Plea Agreement, the parties can go into that as well. So,  
23 those -- that is the penalty for Count Forty-One which is the  
24 count that we are here to talk about. At this point, if you  
25 could put the defendant under oath.

1 JEFFREY A. OLSON, DEFENDANT, SWORN

2 THE COURT: And you can just remain seated there at  
3 counsel table and you'll just need to make sure that you speak  
4 into the microphone.

5 MR. OLSON: Sure.

6 THE COURT: Mr. Olson, how old are you?

7 MR. OLSON: I am 43.

8 THE COURT: And what's your educational background?

9 MR. OLSON: High school graduate with some college.

10 THE COURT: And you can read, write and understand  
11 English?

12 MR. OLSON: Yes.

13 THE COURT: And you've had a chance to review the Plea  
14 Agreement that we're here to talk about today, is that correct?

15 MR. OLSON: Yes.

16 THE COURT: And Mr. Gromowsky, is this Plea Agreement  
17 one that had been provided to you some time ago?

18 MR. GROMOWSKY: Your Honor, with regard to the specific  
19 language of this one, primarily the Factual Basis, Paragraph 3,  
20 and then the Sentencing Guideline range contemplated in Paragraph  
21 10(c) and (d), those are different than what we've had in the  
22 past. But for months we have had several different drafts of  
23 plea agreements that had the standard contract language in them.

24 THE COURT: Okay.

25 MR. GROMOWSKY: And then as recently as, I think we

1 decided it was October, we had a copy of an agreement that stated  
2 a plea to the Count Forty-One as opposed to Count One or Counts  
3 One and Forty-One. So, we have had plenty of time to look at  
4 this particular agreement.

5 THE COURT: All right. And so you've read those past  
6 agreements, is that correct, Mr. Olson?

7 MR. OLSON: Yes, that's correct.

8 THE COURT: And you understand that what difference  
9 there is in the Paragraph 3 and (c) and (d) of the Sentencing  
10 Guideline range?

11 MR. OLSON: Yes, I do.

12 THE COURT: And have you taken any kind of prescription  
13 medication in the last 24 hours?

14 MR. OLSON: No.

15 THE COURT: Have you taken any over-the-counter  
16 medication in the last 24 hours?

17 MR. OLSON: No.

18 THE COURT: Have you had any alcohol within the last 24  
19 hours?

20 MR. OLSON: Yes. But not to any extent that would  
21 impair me.

22 THE COURT: All right. And have you had any alcohol  
23 today or was that yesterday?

24 MR. OLSON: That was yesterday.

25 THE COURT: All right. And you're not under the

1 influence of alcohol today, haven't had any --

2 MR. OLSON: No.

3 THE COURT: And, really, the reason I'm asking these  
4 questions is I want to make sure that you believe you are in a  
5 position today to come to court and make decisions that are in  
6 your own best interest. Is there anything about today or your  
7 circumstances today that you think would impair your ability to  
8 make good decisions on your own behalf?

9 MR. OLSON: No.

10 THE COURT: And have you ever been diagnosed with any  
11 kind of mental illness or disease?

12 MR. OLSON: No.

13 THE COURT: And do you believe you're competent to come  
14 to court and decide how to proceed?

15 MR. OLSON: Yes.

16 THE COURT: And Mr. Gromowsky, you've been working with  
17 this defendant since 2011, do you believe he's competent to come  
18 to court today and decide how to plea?

19 MR. GROMOWSKY: Absolutely, Your Honor.

20 THE COURT: All right. And I'm sure that your attorney  
21 has indicated to you that you have the right to continue to plead  
22 not guilty and go to trial. Do you understand that?

23 MR. OLSON: Yes.

24 THE COURT: And we talked a little bit earlier today.  
25 Your trial is currently set for January 6<sup>th</sup> and Mr. Gromowsky

1 would be representing you at trial. You understand that?

2 MR. OLSON: Yes.

3 THE COURT: If you come to court today and decide to  
4 change your plea from not guilty to guilty, there are a number of  
5 constitutional rights that you'll be giving up and I want to go  
6 through those with you. By pleading not guilty, you have the  
7 right to go trial before a jury of 12 people. Do you understand  
8 that?

9 MR. OLSON: Yes.

10 THE COURT: And you'd be represented by counsel  
11 throughout the course of that trial at every stage of that  
12 proceeding, just as you've been represented at the pretrial  
13 proceedings. Do you understand that?

14 MR. OLSON: Yes.

15 THE COURT: The jury would be told that you are presumed  
16 innocent and that it would be the prosecutor's burden to prove  
17 your guilt beyond a reasonable doubt for any charge that they  
18 were going to trial on. Do you understand that?

19 MR. OLSON: Yes.

20 THE COURT: In order to try to meet that burden, the  
21 Government would call witnesses and your attorney would have the  
22 right to cross-examine any of those witnesses. Do you understand  
23 that?

24 MR. OLSON: Yes.

25 THE COURT: You are not required to put on a defense,

1 but you certainly would have that opportunity. And if there were  
2 witnesses that you wanted the jury to hear from, then I'd issue  
3 subpoenas for them to make sure they came to court. Do you  
4 understand that?

5 MR. OLSON: Yes.

6 THE COURT: And you could not be compelled to testify  
7 against yourself. The Government could not call you to testify.  
8 But if you chose to testify on your own behalf, you could. Do  
9 you understand that?

10 MR. OLSON: Yes.

11 THE COURT: And at the end of the case, the jury verdict  
12 would need to be unanimous or you could not be convicted. Do you  
13 understand that?

14 MR. OLSON: Yes.

15 THE COURT: And then if they jury reached a result that  
16 you did not agree with, you would have the right to appeal to the  
17 Eighth Circuit. Do you understand that?

18 MR. OLSON: Yes.

19 THE COURT: If you choose to plead guilty today, then  
20 you basically give up these rights. While you still have the  
21 right to representation by counsel, basically you'd relieve the  
22 Government of the burden of going to trial before a jury of 12  
23 people and proving your guilt beyond a reasonable doubt.  
24 Likewise, today here in court, you would have to indicate what it  
25 is you did that makes you guilty of Count Forty-One. Do you

1 understand that?

2 MR. OLSON: Yes.

3 THE COURT: Now, it's my understanding, and we've talked  
4 about it a little bit, that there is a Plea Agreement that the  
5 parties have been working on for some time and then there had  
6 been some changes made to it today. On behalf of the Government,  
7 can you basically summarize the key provisions of the Plea  
8 Agreement?

9 MR. NELSON: Yes, Your Honor. The Plea Agreement is to  
10 Count Forty-One. The Government, as described before, has agreed  
11 to dismissed Count One in exchange for Mr. Olson's timely plea of  
12 guilty. Of note, the factual basis for the guilty plea was  
13 altered today with substantial input from Mr. Olson and Mr.  
14 Gromowsky. Basically the facts were just narrowed down. It's  
15 not inconsistent with the previous plea agreement, but the  
16 factual basis is shorter and more focused on solely the activity  
17 changed in Count Forty-One. So that Paragraph 3 summarizes the  
18 conduct that is also charged in the Government's Indictment, and  
19 that's what Mr. Olson is admitting to here today, which is  
20 essentially submitting false OID claims that he had withheld  
21 taxes and as a result, he received \$171,806 in exchange for his  
22 false representations on his 2007 Form 1040 return, and Forms  
23 1099 which were attached. The joint return was submitted October  
24 13, 2008, and it was received here in Kansas City, Missouri,  
25 where it was processed at the IRS Service Center. The Plea

1 Agreement also describes how the Olsons took the \$171,000 out  
2 beginning in October 2008, and spent the proceeds. Approximately  
3 a year later when the IRS was attempting to collect the money  
4 back, Mr. Olson admits that he sent a response claiming that it  
5 was accurate and challenging the IRS to provide proof of anything  
6 incorrect in the return. Mr. Olson, through his plea today, now  
7 admits that he had seen fraud warnings on the IRS website and  
8 still chose to respond to the IRS with the affidavit.  
9 Specifically through the plea he admits that, in fact, the  
10 representations of the income that he received were not -- was  
11 not received from those financial institutions. This Plea  
12 Agreement lists the penalties. It lists the -- which is a  
13 benefit to Mr. Olson because the statutory range of punishment  
14 will be limited now to five years, where the 286 count  
15 contemplated in Count One would have permitted ten years. And  
16 then this sets out the penalties which the Court has already  
17 advised the defendant. It lists the sentencing procedures. This  
18 is a Rule 11(c)(1)(B) Plea Agreement, so it is not binding on the  
19 court and there is no binding recommendation. In Paragraph 8,  
20 the Government has agreed to dismiss Count One. In Paragraph 10,  
21 the parties have agreed on certain Guidelines applications with  
22 the stipulation and understanding that this will not be binding  
23 on the court. However, the parties have taken certain discreet  
24 positions with respect to the Guidelines issues, including that  
25 the loss amount applicable to Mr. Olson is \$171,806, which

1 results in a Base Offense Level of 16, under 2T1.1 of the  
2 Guidelines. That's what the parties anticipate where he will be  
3 but the Plea Agreement makes it clear that that is not binding on  
4 the court, and that's only an estimation. The parties agree to  
5 leave open the issue of whether a two-level enhancement is  
6 applicable for sophisticated means. The Government has agreed of  
7 benefit to the defendant to agree to and request a three-level  
8 reduction pursuant to 3E1.1(b) of the Sentencing Guidelines for  
9 full acceptance of responsibility. That is a benefit to the  
10 defendant, particularly given the late nature of the plea  
11 relative to the other defendants and the looming trial deadline  
12 and the substantial efforts the Government has already expended  
13 to prepare for his trial. There are certain financial  
14 obligations, and the Government reserves certain rights in 13 and  
15 14. There's a waiver of constitutional rights of import in  
16 Paragraph 15, on page 11, including the defendant is waiving the  
17 right to plead not guilty -- to persist in a plea of not guilty  
18 and to a trial. Of particular import that the Government should  
19 highlight is Paragraph 16 on page 12 in which the defendant  
20 acknowledges, understands and agrees that by pleading guilty  
21 pursuant to this Plea Agreement, he waives his right to appeal or  
22 collaterally attack a finding of guilt following the acceptance  
23 of this Plea Agreement, except on grounds of, one, ineffective  
24 assistance of counsel, or, two, prosecutorial misconduct. And he  
25 expressly waives the right to appeal his sentence directly or

1 collaterally on any grounds except claims of ineffective  
2 assistance of counsel, prosecutorial misconduct, or an illegal  
3 sentence. He waives his right to FOIA requests. And there is  
4 certain other boilerplate language that's been in the pleas that  
5 he's had for over a year in the remaining paragraphs. But those  
6 are the main points of the plea, Your Honor.

7 THE COURT: Mr. Gromowsky, anything you want to add in  
8 terms of the central elements of the Plea Agreement?

9 MR. GROMOWSKY: Your Honor, only that the standardized  
10 language regarding sentencing recommendations from the parties  
11 has been slightly modified in the back of Paragraph 10 which  
12 would allow the defendant to ask for a departure or a variance  
13 down from the Guidelines range. And then the Government, of  
14 course, is permitted then to seek an upward departure or a  
15 variance from the Guidelines range if they so chose to do so.

16 THE COURT: All right. Now, I don't have a signed copy.  
17 Has the defendant actually signed a copy of the Plea Agreement?  
18 All right. So, I'm looking now at the document that has  
19 signatures of counsel. Is that your signature on the back page,  
20 Mr. Olson?

21 MR. OLSON: Yes.

22 THE COURT: And did you voluntarily sign that document  
23 earlier today?

24 MR. OLSON: Yes.

25 THE COURT: And did you have a chance to go over this

1 particular version of the Plea Agreement with your attorney  
2 before you signed it?

3 MR. OLSON: Yes.

4 THE COURT: And you understand that the Plea Agreement  
5 is between you and the Government, that the court is not a part  
6 to that agreement?

7 MR. OLSON: Yes.

8 THE COURT: And even though we're here to talk about it  
9 today, there are certain things that are estimated in there that  
10 wouldn't be binding on the court. Do you understand that?

11 MR. OLSON: Yes.

12 THE COURT: And have you had a chance to talk to your  
13 attorney about the Sentencing Guidelines?

14 MR. OLSON: Yes.

15 THE COURT: And the Sentencing Guidelines are advisory  
16 to the court, so the court isn't bound by them. As long as the  
17 court imposes a reasonable sentence within that statutory maximum  
18 under this agreement, you would not have the right to complain.  
19 Do you understand that?

20 MR. OLSON: Yes.

21 THE COURT: And even though you've estimated -- you and  
22 the Government have estimated some potential Guideline ranges,  
23 you understand that that's just an estimate and it's not binding  
24 on Judge Wimes, who will be your sentencing judge. Do you  
25 understand that?

1 MR. OLSON: Yes.

2 THE COURT: Has anyone promised you what sentence Judge  
3 Wimes will ultimately impose?

4 MR. OLSON: No.

5 THE COURT: And do you understand that once you plead  
6 guilty, at the time of sentencing, if you don't like the sentence  
7 that's imposed, you won't have a right to withdraw your guilty  
8 plea just because don't agree with the sentence. Do you  
9 understand that?

10 MR. OLSON: Yes.

11 THE COURT: And, Mr. Gromowsky, if you could just  
12 outline for the record -- I think we've touched on it a little  
13 bit -- but the reasons that your client decided to enter into  
14 this plea?

15 MR. GROMOWSKY: Yes, Your Honor. As we discussed at the  
16 earlier hearing and I'll repeat here, from the outset of this  
17 case, Mr. Olson and his wife, who is a co-defendant in the case,  
18 sought to resolve the case in a manner in which at least one of  
19 them had the potential to remain at the home and continue to  
20 raise their children, and so that was what started the ball  
21 rolling. As to the particulars of this case, or this plea that's  
22 now before the Court, some of the benefits include the fact that  
23 we'll receive the three-point reduction for pleading guilty, even  
24 as was stated by the Government, we're late to the game with  
25 regard to actually executing the plea. Additionally, he will be

1 pleading guilty to the lesser count in Count Forty-One, as  
2 opposed to the conspiracy count. That does a couple of things,  
3 one of which was mentioned by Mr. Nelson in that the statutory  
4 maximum sentence is less in Forty-One than it was in One. The  
5 other thing it does, it has the potential for lowering the  
6 Sentencing Guideline range, which is a benefit to my client  
7 because if he was charged with the conspiracy amount, obviously,  
8 dollar amounts could become astronomical in a case like this.  
9 And so he's not going to have to necessarily face the full brunt  
10 of the Government's prosecution against him. And then, of  
11 course, the standard things such as regard to plea agreements, it  
12 provides my client peace of mind to know that the resolution of  
13 this will be done. Also in that regard, but specifically his  
14 wife has, as a cooperator as part of this group thing we've done,  
15 is required to testify against Mr. Olson if the case had  
16 proceeded to trial. So that obviously is putting a lot of stress  
17 on himself and his family, and so by avoiding that outcome, that  
18 is also of benefit to my client.

19 THE COURT: All right. Thank you. Mr. Olson, how do  
20 you wish to plead to Count Forty-One of the Indictment?

21 MR. OLSON: Guilty.

22 THE COURT: Now, have you had sufficient time to confer  
23 with Mr. Gromowsky about this decision?

24 MR. OLSON: Yes.

25 THE COURT: And I know we've had some discussion earlier

1 today, but are you satisfied with the representation you've  
2 received from Mr. Gromowsky?

3 MR. OLSON: Yes.

4 THE COURT: And earlier today you actually made a  
5 decision to proceed to trial with Mr. Gromowsky as your attorney,  
6 is that correct?

7 MR. OLSON: Yes.

8 THE COURT: And we talked a little bit earlier about  
9 this. He's represented you since basically around September of  
10 2011, is that correct?

11 MR. OLSON: That's correct.

12 THE COURT: And you've had a chance to go over discovery  
13 with him?

14 MR. OLSON: Not personally with him. I have seen the  
15 discovery, yes.

16 THE COURT: You've seen the discovery in the case. He's  
17 been available if you chose to call him up. I know you weren't  
18 here in town but you could have called him whenever you needed to  
19 to talk to him about the case?

20 MR. OLSON: Yes.

21 THE COURT: And so, at this point, you don't have any  
22 complaints about his representation, is that fair to say?

23 MR. OLSON: Yes, that's correct.

24 THE COURT: All right. Mr. Nelson, if you could outline  
25 the evidence that you'd present at trial with respect to Count

1 Forty-One?

2 MR. NELSON: Yes, Your Honor. I summarized this a  
3 little bit before --

4 THE COURT: Yes.

5 MR. NELSON: -- when I went over the key points, so I  
6 won't read word for word Paragraph 3 of the Factual Basis. But  
7 Paragraph 3 is on pages 2 to 3 of the Indictment. We've  
8 discussed this extensively in the past and today with the input  
9 of the defendant specifically. He has approved all the facts on  
10 pages 2 and 3. We believe they'd make up all the elements of  
11 this crime of submitting a false claim and essentially the  
12 defendant admits to Count Forty-One of the Indictment that on  
13 October 13, 2008, Jeff and his wife, Karen Olson, submitted a  
14 2007 joint income tax return including Forms 1099-OID. The Forms  
15 1099-OID and 1040 return itself listed a large amount of income  
16 based on supposed OID income, of which the Olsons represented a  
17 large amount of taxes had already been withheld and paid. In  
18 actuality, as Jeff Olson well knew at the time the return was  
19 filed, the Olsons did not receive any interest income as claimed  
20 on their 2007 Schedule B and the Olson did not receive any Forms  
21 1099-OID or Forms 1099-A for any of the financial institutions  
22 listed on their Schedule B. The Olsons' return was processed  
23 through the Kansas City, Missouri, IRS Service Center in the  
24 Western District of Missouri. As a result of the claim, they  
25 received a refund of \$171,806 which Mr. Olson admits that they

1 then spent on personal expenditures. He says that they had spent  
2 all the money by the time the IRS contacted them a year later.  
3 Mr. Olson admits that he wrote a response to the IRS about the  
4 claim challenging the IRS essentially to provide proof of  
5 anything false on the return and Mr. Olson now admits that he had  
6 seen fraud warnings on the IRS website prior to sending that  
7 correspondence. And he did admit when IRS-CI agents interviewed  
8 him that the Olsons had submitted that claim for \$171,806.

9 THE COURT: All right. Mr. Olson, do you have a copy of  
10 the Plea Agreement there in front of you?

11 MR. OLSON: Yes, I do.

12 THE COURT: And basically, Mr. Nelson has been reading  
13 the Factual Basis for the plea which begins on page 2 and ends at  
14 the top page 3. Have you had a chance to read through that  
15 Factual Basis for the plea?

16 MR. OLSON: Yes, I have.

17 THE COURT: And you'd had a chance to have some input on  
18 what actually went into that?

19 MR. OLSON: I have.

20 THE COURT: And do you agree that the statements that  
21 Mr. Nelson just made and the Factual Basis for the plea is the  
22 activity that you actually engaged in?

23 MR. OLSON: Yes.

24 THE COURT: And you admit that if the case were to go to  
25 trial, Mr. Nelson would be able to prove these facts as set forth

1 in Paragraph 3 at pages 2 and 3 of the Plea Agreement?

2 MR. OLSON: Yes.

3 THE COURT: Mr. Nelson, is there anything other inquiry  
4 that you'd like me to make?

5 MR. NELSON: No, Your Honor.

6 THE COURT: All right. Anything else that either side  
7 feels we need to cover as part of the plea here today?

8 MR. NELSON: Not from the Government, Your Honor.

9 MR. GROMOWSKY: No, Your Honor.

10 THE COURT: Then, Mr. Olson, I will make a Report and  
11 Recommendation to Judge Wimes recommending that he accept your  
12 plea on the basis that you're competent to proceed, that you  
13 understand your rights, and that you have voluntarily entered  
14 into this Plea Agreement, that there's a factual basis for the  
15 plea, and that beyond a reasonable doubt, you're guilty of the  
16 crime charged. You will continue on the bond that you've been on  
17 pending sentencing. Because we did this at the last minute, we  
18 didn't get a chance to notify Probation to be up here, but I am  
19 ordering that a Presentence Report be prepared, so someone will  
20 be contacting you to get information. Once that report's  
21 finalized, or a draft is prepared, it'll be sent to counsel.  
22 You'll have an opportunity to have input before the final  
23 document is prepared. If there are things you don't agree with  
24 at the time of sentencing, you'll have an opportunity to address  
25 that or present any evidence as well. And, so yet this

1 afternoon, we'll let Probation know that they need to get working  
2 on a Presentence. And you'll have to work with your client to,  
3 you know, make arrangements for him to talk to them.

4 MR. GROMOWSKY: Yes, Your Honor.

5 THE COURT: All right. Anything else?

6 MR. NELSON: No, Your Honor, thank you.

7 MR. GROMOWSKY: No, Your Honor, thank you.

8 THE COURT: All right. We'll be in recess and I hope  
9 you catch your flight, Mr. Olson.

10 MR. OLSON: Thank you.

11 (Court Adjourned at 4:27 p.m.)  
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5 I certify that the foregoing is a correct transcript  
6 from the electronic sound recording of the proceeding in the  
7 above-entitled matter.

8  
9 /s/ Lissa C. Whittaker  
Signature of transcriber

December 4, 2013  
Date